

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
DEL RIO DIVISION**

GERARDO SERRANO, on behalf of himself and  
all others similarly situated,

*Plaintiff,*

v.

Civil Action No. 2:17-cv-00048-AM-CW

U.S. CUSTOMS AND BORDER PROTECTION;

UNITED STATES OF AMERICA;

KEVIN McALEENAN, Commissioner, U.S.  
Customs and Border Protection, sued in his  
official capacity;

JUAN ESPINOZA, Fines, Penalties, and  
Forfeiture Paralegal Specialist, sued in his  
individual capacity;

JOHN DOE 1-X, Unknown U.S. Customs and  
Border Protection agents, sued in their individual  
capacities;

*Defendants.*

**PLAINTIFF’S NOTICE REGARDING  
RETURN OF SEIZED PROPERTY**

Plaintiff Gerardo Serrano submits this Notice to inform the Court that Plaintiff has now received the ammunition and magazine seized by Defendants.

Count I of Plaintiff’s Complaint is now moot. *See* Doc. 1 ¶¶ 130-135. Count I sought the return of Plaintiff’s “truck and all of its contents, his five bullets and his magazine, and the \$3,804.99 that he posted as a bond.” *Id.* ¶ 132. The government held all of that property for over two years without any kind of hearing or judicial process. Now, the government has returned all of Plaintiff’s property without apology or explanation.

Notwithstanding this development, Counts II through IV of the Complaint are not moot. *See* Doc. 1 ¶¶ 136-160. Counts II and III seek damages and plainly are not moot. Meanwhile, Count IV seeks classwide injunctive and declaratory relief directing the government to provide a prompt post-seizure hearing when it seizes vehicles for civil forfeiture, and that claim remains alive because the “relation back” doctrine “enables the mooted named plaintiff to continue pursuing the class’s claims.” Newburg on Class Actions § 2:13 (5th ed.). *See* Doc. 55 at 8-12 (discussing application of relation-back doctrine to this case); Doc. 62 at 1-2 (same). Courts have applied the relation-back doctrine to class-action plaintiffs with identical due process claims. *See Krimstock v. Kelly*, 306 F.3d 40, 70 n.34 (2d Cir. 2002); *Washington v. Marion Cty. Prosecutor*, 264 F. Supp. 3d 957, 969-71 (S.D. Ind. 2017). Plaintiff’s individual and class-wide claims should therefore continue to proceed.

Dated: May 29, 2018

Respectfully submitted,

/s/ Robert E. Johnson

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\*Admitted *Pro Hac Vice*

*Attorneys for Plaintiff Gerardo Serrano and the Proposed Plaintiff Class*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29th day of May, 2018, a true and correct copy of the foregoing Notice was filed electronically using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/Robert E. Johnson